

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION III

CA 06-420

FEBRUARY 14, 2007

ARKANSANS FOR ANIMALS, INC.
APPELLANT

APPEAL FROM THE NEWTON
COUNTY CIRCUIT COURT
[NO. CV 2005-58-3]

V.

HONORABLE JOHN R. PUTMAN,
JUDGE

CHAD SPEARS and STATE OF
ARKANSAS

APPELLEES

REVERSED AND REMANDED WITH
DIRECTIONS

This appeal involves a procedural morass of an appeal from district court to circuit court for trial de novo. The Newton County Circuit Court vacated its earlier judgment in favor of appellant Arkansans for Animals, Inc., after finding that appellant failed to properly perfect its appeal from the district court, and dismissed the appeal. Appellant raises three points for reversal. We reverse and remand with directions.

This appeal arises out of a criminal case that originated in the District Court of Newton County. Appellant was asked to care for four horses when the horses were seized from appellee Chad Spears and Spears was charged with animal cruelty. The criminal information against Spears alleged that the incident leading to the charges occurred on October 26, 2004, the date appellant took charge of the horses. On April 18, 2005, Spears

pled no-contest and was convicted in district court and sentenced to pay a fine. A written judgment was entered on April 26, 2005. The district court also ordered that the horses be returned to Spears's attorney to be kept on the attorney's property until a hearing could be held on the issue of restitution. The district court transferred the issue of restitution to its small-claims division.

Appellant refused to return the horses without being paid for the keep of the horses. On June 7, 2005, the district court, in response to an unverified letter from Spears's attorney, issued an order directing that Joyce Hillard (appellant's executive director) appear and show cause why she should not be held in contempt for refusing to return the horses. The district court scheduled the contempt hearing for June 16, 2005. Prior to the hearing, Hillard, individually, sought a continuance of the contempt hearing, which was denied. When Hillard did not appear at the hearing, the district court ordered Hillard to divulge the location of the horses and make them available for pickup, or a body attachment would issue against her. The district court reserved all other issues, including that of restitution for the care and treatment of the horses.

Hillard and appellant sought a restraining order and writs of certiorari and prohibition from the circuit court to prevent the district court from proceeding with the contempt proceedings against Hillard. The circuit court granted the requested order on July 5, 2005, holding that the district court's actions were void because appellant and Hillard were not parties to the underlying district court action and had not been served with process.

Following entry of the circuit court's prohibition order, the district court scheduled a hearing for October 26, 2005, on the issue of the money owed to appellant and whether appellant had a possessory lien.

On October 12, 2005, appellant filed a counterclaim in the district court alleging that it had a lien on the horses pursuant to Ark. Code Ann. § 18-48-101 (Repl. 2003) and that it was entitled to retain the horses until paid for the expenses of boarding and caring for them. Appellant sought \$11,890 for boarding and providing medical care for the horses. Appellant also filed a motion to transfer the case to circuit court on the basis that its counterclaim exceeded the district court's jurisdiction.

After the hearing on October 26, 2005, the district court entered a written order on October 28, 2005, in which it found that appellant was entitled to restitution in the amount of \$3,600 but directed that appellant pay Spears \$900 in attorney fees. The district court also directed that Spears tender \$2,500 as bond for the restitution payment. The district court found that appellant's lien was dependent upon appellant's status as a substitute bailee for the State. The court noted that the State had attempted to return the horses to Spears since April 18, 2005, the date of the guilty plea and that, as a result of appellant's lack of cooperation, appellant's lien terminated as of that day. The district court did not specifically address appellant's counterclaim as such or the motion to transfer.

Immediately after trial in district court, appellant filed an appeal to the circuit court. The district court record and docket sheet were filed with the circuit court on that same day.

The district court's written order, filed on October 28, 2005, was not included in the record certified to circuit court.

The circuit court scheduled a trial on the appeal for November 7, 2005. During an opening colloquy, Spears's attorney asked that the entire case be transferred to circuit court because appellant's counterclaim exceeded the district court's jurisdictional limit. Spears's attorney then called the district court clerk and asked that an order transferring the counterclaim be faxed to the circuit court clerk. The district court issued an order purporting to transfer case number 05-58CV, which order was file-marked in circuit court on November 7, 2005. Just before the first witness testified, the prosecuting attorney noted that the district court's October 28 order was not included in the record certified by the clerk of the district court. The prosecutor contended that, without that order, the record was not complete. Appellant's counsel stated that the record was complete because the district court had made a docket entry. The district court's order was stipulated as an exhibit in the circuit court.

The circuit court, after hearing testimony as to the reasonableness of appellant's charges, ruled from the bench and found that appellant was not a stable or livery and, therefore, did not have a lien pursuant to Ark. Code Ann. § 18-48-101. However, the court found that appellant was entitled to judgment against Spears in the sum of \$5,765 as restitution for the boarding, care, and transportation of his horses, together with post-judgment interest. A written judgment was entered on November 14, 2005.

Appellant filed a timely motion for new trial and reconsideration of the trial court's ruling on November 28, 2005, arguing that the district court should not have considered the matter because the amount appellant was seeking was in excess of the district court's jurisdiction. The trial court did not rule on the motion, and the motion was deemed denied as of December 28, 2005, pursuant to Ark. R. Civ. P. 59(b).

The trial court issued a notice for a hearing to be held on January 11, 2006, to address concerns the court had about whether it had jurisdiction over the appeal from district court and whether it should amend its earlier judgment. At the hearing, the trial court indicated that its concern was whether it had jurisdiction because the failure to include the district court's written order resulted in less than a complete record being certified to the circuit court.

Subsequently, the trial court entered an amended judgment on January 25, 2006, in which it vacated its earlier judgment. The trial court found that, because the district court's written order of October 28, 2005, was not included in the record certified by the district court clerk, the appeal from district court was not properly perfected and the circuit court was without jurisdiction. Appellant timely filed a notice of appeal.

Although appellant raises three points for reversal, we address only appellant's third point. This is because we hold that the circuit court lacked jurisdiction because the district court lacked jurisdiction. Furthermore, the case was not properly removed from the district court to the circuit court. We point out that the case was sent to the circuit court by two methods, neither of which were complete or successful. The first was by the appeal from the

district court's ruling from the bench on October 26, 2005. That effort was unsuccessful because, as the circuit court pointed out in its amended judgment, the district court's record certified to the circuit court did not contain the district court's written order. The entire district court record must be certified to the circuit court within thirty days in order for that court to acquire jurisdiction. *See McNabb v. State*, __ Ark. __, __ S.W.3d __ (June 29, 2006). However, it is also irrelevant whether the record contained the written order because the district court should not have been exercising any jurisdiction over the case due to the amount of appellant's counterclaim. The second was the attempted transfer on November 7, 2005, the date of trial in the circuit court. However, the transfer was ineffective because the district court had already considered the case, both Spears's request for the return of his horses and appellant's counterclaim for restitution, and rendered a decision. There was nothing left to transfer to the circuit court.

Under Arkansas Constitution Amendment 80 and Ark. Code Ann. § 16-17-704 (Supp. 2005), the monetary limit on the jurisdiction of district courts is set by supreme court rule. The supreme court, in Administrative Order No. 18, established the limit of the district court's civil jurisdiction at \$5,000.

District Court Rule 7(c) provides:

If a compulsory counterclaim or a set-off involves an amount that would cause the court to lose jurisdiction of the case, the court, upon its own motion or upon motion of either party, *shall transfer the entire case* to circuit court for determination therein as if the case had been appealed.

(Emphasis added.) Here, the district court did not follow the requirements of District Court Rule 7(c); instead, it proceeded to hear the entire case. Appellant's counterclaim on its face was in excess of the district court's jurisdictional limit, and the district court had no authority to take any action other than to transfer the entire case to circuit court. When the district court lacks subject-matter jurisdiction of the original cause, then the circuit court acquires none on appeal. *Miles v. Southern*, 297 Ark. 274, 760 S.W.2d 868 (1988); *French v. Webb*, 80 Ark. App. 357, 96 S.W.3d 740 (2003). Accordingly, we hold the trial court erred in exercising jurisdiction over appellant's appeal for lack of subject-matter jurisdiction. We therefore reverse the judgment of the circuit court and remand the case with directions that the circuit court remand the case to the district court with directions that the district court vacate its order of October 28, 2005, and transfer the entire case to the circuit court for trial on all issues.

Reversed and remanded with directions.

GLOVER and MILLER, JJ., agree.